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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

NANCY BRIDGES, on behalf of herself,
and all others similarly situated,

Plaintiff,

v.

MERRICK BANK CORPORATION,

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §§
227 et seq.**

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Nancy Bridges (“Plaintiff”) brings this Class Action Complaint for
3 damages, injunctive relief, and any other available legal or equitable remedies,
4 resulting from the illegal actions of Merrick Bank Corporation (“Defendant” or
5 “Merrick”), in negligently, and/or willfully contacting Plaintiff through telephone
6 calls on Plaintiff’s cellular telephone, in violation of the Telephone Consumer
7 Protection Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”), thereby invading Plaintiff’s
8 privacy. Plaintiff alleges as follows upon personal knowledge as to her own acts and
9 experiences, and, as to all other matters, upon information and belief, including
10 investigation conducted by her attorneys.

JURISDICTION AND VENUE

11
12 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff
13 seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when
14 aggregated among a proposed class number in the tens of thousands, exceeds the
15 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a
16 national class, which will result in at least one class member belonging to a different
17 state than that of the Defendant, providing jurisdiction under 28 U.S.C. §
18 1332(d)(2)(A). Therefore, both elements of diversity jurisdiction under the Class
19 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

20 3. This Court has federal question subject matter jurisdiction under 28
21 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

22 4. Venue is proper in the United States District Court for the Northern
23 District of California pursuant to 28 U.S.C. §§ 1391(b) because Defendant, at all
24 times herein mentioned, was doing business in the County of Alameda, State of
25 California, and a substantial part of the events giving rise to the claim occurred in
26 this jurisdiction.

27 ///

28 ///

PARTIES

5. Plaintiff Nancy Bridges is, and at all times mentioned herein was, a resident of the State of California, County of Alameda. She is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. § 153 (32).

6. Defendant Merrick is a business entity that maintains a business office in Draper, Utah. Merrick is a “person” as defined by 47 U.S.C. § 153 (32).

7. Plaintiff alleges that at all times relevant herein Merrick conducted business in the state of California and in the County of Alameda, and within this judicial district.

**THE TELEPHONE CONSUMER PROTECTION ACT OF 1991
(TCPA), 47 U.S.C. §§ 227 *et seq.***

8. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA),¹ in response to a growing number of consumer complaints regarding certain telemarketing practices.

9. The TCPA regulates, among other things, the use of automated telephone equipment, or “autodialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.²

10. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient.

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

² 47 U.S.C. § 227(b)(1)(A)(iii).

1 The FCC also recognized that wireless customers are charged for incoming calls
2 whether they pay in advance or after the minutes are used.³

3 11. On January 4, 2008, the FCC released a Declaratory Ruling wherein it
4 confirmed that autodialed and prerecorded message calls to a wireless number by a
5 creditor (or on behalf of a creditor) are permitted only if the calls are made with the
6 “prior express consent” of the called party.⁴ The FCC “emphasize[d] that prior
7 express consent is deemed to be granted only if the wireless number was provided
8 by the consumer to the creditor, and that such number was provided during the
9 transaction that resulted in the debt owed.”⁵

10 **FACTUAL ALLEGATIONS**

11 12. Beginning around at least July 2015, Plaintiff received a number of
12 unsolicited phone calls from Merrick Bank to her wireless phone, for which Plaintiff
13 provided no consent to call.

14 13. Such calls were often made by prerecorded or artificial voice message.

15 14. The incoming calls from Merrick received by Plaintiff came from the
16 following number: 800-599-2346.

17 15. Specifically, on July 10, 2015, and twice on July 13, 2015, Plaintiff
18 received unsolicited phone calls from Merrick.

19 16. Plaintiff has no credit cards, accounts, or any other relationship with
20 Merrick Bank.

21 17. These unsolicited phone calls placed to Plaintiff’s wireless telephone
22 were placed via an “automatic telephone dialing system,” (“ATDS”) as defined by
23

24 ³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of*
25 *1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

26 ⁴ *In the Matter of Rules and Regulations Implementing the Telephone Consumer*
27 *Protection Act of 1991 (“FCC Declaratory Ruling”)*, 23 F.C.C.R. 559, 23 FCC Rcd.
28 559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

⁵ *FCC Declaratory Ruling*, 23 F.C.C.R. at 564-65 (¶ 10).

1 47 U.S.C. § 227 (a)(1) and by using “an artificial or prerecorded voice” system as
2 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store
3 numbers randomly or sequentially, and to dial such numbers, to place telephone calls
4 to Plaintiff’s cellular telephone.

5 18. The telephone number that Defendant, or its agents, called was assigned
6 to a cellular telephone service for which Plaintiff incurred a charge for incoming
7 calls pursuant to 47 U.S.C. § 227 (b)(1).

8 19. These telephone calls constitute calls that were not for emergency
9 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

10 20. Plaintiff did not provide Defendant or its agents prior express consent
11 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

12 21. These telephone calls by Defendant or its agents therefore violated 47
13 U.S.C. § 227(b)(1).

14 22. Under the TCPA and pursuant to the FCC’s January 2008 Declaratory
15 Ruling, the burden is on Defendant to demonstrate that Plaintiff provided express
16 consent within the meaning of the statute.

17 **CLASS ACTION ALLEGATIONS**

18 23. Plaintiff brings this action on behalf of herself and on behalf of and all
19 others similarly situated (“the Class”).

20 24. Plaintiff represents, and is a member of the Class, consisting of all
21 persons within the United States who received any unsolicited telephone calls from
22 Defendant or its agents on their paging service, cellular phone service, mobile radio
23 service, radio common carrier service, or other service, through the use of any
24 automatic telephone dialing system or artificial or pre-recorded voice system as set
25 forth in 47 U.S.C. § 227(b)(1)(A)(3), which telephone calls by Defendant or its
26 agents were not made for emergency purposes or with the recipients’ prior express
27 consent, within four years prior to the filing through the present.
28

1 25. Defendant and its employees or agents are excluded from the Class.
2 Plaintiff does not know the number of members in the Class, but believes the Class
3 members number in the hundreds of thousands, if not more. Thus, this matter should
4 be certified as a Class action to assist in the expeditious litigation of this matter.

5 26. Plaintiff and members of the Class were harmed by the acts of
6 Defendant in at least the following ways: Defendant, either directly or through its
7 agents, illegally contacted Plaintiff and the Class members via their cellular
8 telephones by using unsolicited telephone calls, thereby causing Plaintiff and the
9 Class members to incur certain cellular telephone charges or reduce cellular
10 telephone time for which Plaintiff and the Class members previously paid, and
11 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class
12 members were damaged thereby.

13 27. This suit seeks only damages and injunctive relief for recovery of
14 economic injury on behalf of the Class and it expressly is not intended to request
15 any recovery for personal injury and claims related thereto. Plaintiff reserves the
16 right to expand the Class definition to seek recovery on behalf of additional persons
17 as warranted as facts are learned in further investigation and discovery.

18 28. The joinder of the Class members is impractical and the disposition of
19 their claims in the Class action will provide substantial benefits both to the parties
20 and to the Court. The Class can be identified through Defendant's records or
21 Defendant's agents' records.

22 29. There is a well-defined community of interest in the questions of law
23 and fact involved affecting the parties to be represented. The questions of law and
24 fact to the Class predominate over questions which may affect individual Class
25 members, including the following:

- 26 a. Whether, within four years prior to the filing of this Complaint
27 through the present, Defendant or its agents placed telephone calls
28 without the recipients' prior express consent (other than a telephone

- call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing system or an artificial or pre-recorded voice system, to any telephone number assigned to a cellular telephone service;
- b. Whether the equipment Defendant, or its agents, used to make the telephone calls in question was an automatic telephone dialing system as contemplated by the TCPA;
- c. Whether Defendant, or its agents, systematically made telephone calls to persons featuring an artificial or pre-recorded voice;
- d. Whether Defendant, or its agents, systematically made telephone calls to persons who did not previously provide Defendant with their prior express consent to receive such telephone calls;
- e. Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- f. Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

30. As a person that received at least one unsolicited telephone call to her cell phone without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interest antagonistic to any member of the Class.

31. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to individually seek legal redress for the wrongs complained of herein.

32. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

33. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal law. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

34. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. §§ 227 *ET SEQ.*

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. Each such telephone call was made using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers. By using such equipment, Defendant was able to effectively make thousands of phone calls simultaneously to lists of thousands of wireless phone numbers of consumers without human intervention. These telephone calls also featured a prerecorded voice and were made without the prior express consent of the Plaintiff and other members of the Class to receive such telephone calls.

37. Defendant also made telephone calls featuring a prerecorded or artificial voice without the prior express consent of the Plaintiff and other members of the Class to receive such telephone calls.

38. The foregoing acts and omissions of Defendant and its agents constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

39. As a result of Defendant's, and Defendant's agents', negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

40. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE

TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. §§ 227 *ET SEQ.*

41. Plaintiff incorporates by reference the above paragraphs 1 through 34 inclusive, of this Complaint as though fully stated herein.

42. Each such telephone call was made using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers. By using such equipment, Defendant was able to effectively make thousands of phone calls simultaneously to lists of thousands of wireless phone numbers of consumers without human intervention. These telephone calls also featured a prerecorded voice and were made without the prior express consent of the Plaintiff and other members of the Class to receive such telephone calls.

43. Defendant also made telephone calls featuring a prerecorded or artificial voice without the prior express consent of the Plaintiff and other members of the Class to receive such telephone calls.

44. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. §§ 227 *et*
2 *seq.*

3 45. As a result of Defendant's knowing and/or willful violations of 47
4 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as
5 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47
6 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 46. Plaintiff and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9 **PRAYER FOR RELIEF**

10 **Wherefore**, Plaintiff respectfully requests the Court to grant Plaintiff and the Class
11 members the following relief against Defendant:

12 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
13 **THE TCPA, 47 U.S.C. §§ 227 *ET SEQ.***

14 47. As a result of Defendant's, and Defendant's agents', negligent
15 violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class
16 member \$500.00 in statutory damages, for each and every violation, pursuant to 47
17 U.S.C. § 227(b)(3)(B).

18 48. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief
19 prohibiting such conduct in the future.

20 49. Any other relief the Court may deem just and proper.

21 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
22 **VIOLATION OF THE TCPA, 47 U.S.C. §§ 227 *ET SEQ.***

23 50. As a result of Defendant's, and Defendant's agents', willful and/or
24 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each
25 Class member treble damages, as provided by statute, up to \$1,500.00 for each and
26 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

27 51. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
28 conduct in the future.

52. Any other relief the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: November 11, 2015

/s/ Ronald A. Marron

By: Ronald A. Marron

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Dated: November 11, 2015

/s/ Albert R. Limberg

By: Albert R. Limberg

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